

TIPPECANOE COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
November 15, 2010

The Tippecanoe County Commissioners met on Monday, November 15, 2010 at 10:00 a. m. in the Tippecanoe Room in the County Office Building. Commissioners present were: President John L. Knochel, Vice President David S. Byers, and Commissioner Thomas P. Murtaugh. Also present were: Attorney David W. Luhman, Auditor Jennifer Weston, Commissioner's Assistant Frank Cederquist, and Secretary Kay Muse.

President Knochel called the meeting to order and led the Pledge of Allegiance.

APPROVAL OF MINUTES

- Commissioner Byers moved to approve the minutes of the November 1, 2010 meeting, second by Commissioner Murtaugh; motion carried.

PRESENTATION OF ACCOUNTS PAYABLE VOUCHERS

Commissioner's Assistant Frank Cederquist recommended approval of Accounts Payable Vouchers for November 3, 4, 5, 10, 11, and 12, 2010. The Auditor's name has been removed from five claims for Superior Court 6 for interpreter service.

- Commissioner Murtaugh moved to approve the Account Payable Vouchers as presented, second by Commissioner Byers; motion carried.

HIGHWAY – Opal Kuhl

Drainage Easement – Wildcat Valley Estates Subdivision, Phase 1

Director Opal Kuhl presented a Drainage Easement for Lot 15 in the amount of \$250 in the name of Richard L. McDaniel and Rebecca A. McDaniel.

- Commissioner Murtaugh moved to approve the Drainage Easement as presented, second by Commissioner Byers; motion carried.

Quit Claim Deed – Bridge U209

Director Opal Kuhl said that Lilly has agreed to provide all of the right-of-ways for Bridge U209. However, Parcel 1-QC is not being used for right-of-way and this quit claim will deed this parcel back to Evonics.

- Commissioner Murtaugh moved to approve the Quit Claim Deed for Parcel 1-QC as presented, second by Commissioner Byers; motion carried.

Temporary Easement Grant – Lindberg Road Project

Director Opal Kuhl presented a Temporary Easement Grant for Parcel 1, 1a, and 1b, in the amount \$ 0 in the name of the West Lafayette Board of Parks and Recreation.

- Commissioner Murtaugh moved to approve the Temporary Easement Grant as presented, second by Commissioner Byers; motion carried.

Director Opal Kuhl presented a Temporary Easement Grant for Parcel 3 in the amount of \$1 in the name of West Lafayette Redevelopment Commission.

- Commissioner Byers moved to approve the Temporary Easement Grant as presented, second by Commissioner Murtaugh; motion carried.

Perpetual Highway Easement – Stacey Hollow Place

Director Opal Kuhl said because it is private property Tippecanoe School Corporation will not allow school buses to turn around in a cul-de-sac located in Stacey Hollow. The residents of Stacey Hollow Place have granted a perpetual highway easement, this will allow the school buses to turn around so the children will not have to be taken to the roadway. The signatures on the Perpetual Highway Easement are Michael R. Smith, Nancy D. Smith, and Samuel J. Brown. Attorney Luhman has reviewed the easement.

- Commissioner Murtaugh moved to accept the Perpetual Highway Easement as presented, second by Commissioner Byers; motion carried.

RECORDER – Oneta Tolle

2011 Kip Maintenance Agreement with Eastern Engineering

Recorder Oneta Tolle said this is a Service Agreement with Eastern Engineering for the Kip machine that prints plats. There is a \$4.90 increase from last year and Attorney Luhman has reviewed the agreement.

- Commissioner Byers moved to approve the 2011 Maintenance Agreement with Eastern Engineering as presented, second by Commissioner Murtaugh; motion carried.

SECOND ADDENDUM TO STORAGE RENTAL AGREEMENT – River City Market Building

Commissioner Knochel said this agreement is for storage space, for records of the Clerk's Office. Attorney Luhman said the County currently rents three storage units, this agreement would bring the number of units to four. The cost of the unit is \$175 per month for 340 square feet. It will be effective immediately.

- Commissioner Murtaugh moved to approve the Addendum to the Storage Rental Agreement with River City Market Building as presented, second by Commissioner Byers; motion carried.

THIRD ADDENDUM TO LEASE AGREEMENT FOR COURT SERVICES

Attorney Luhman said that Court Services would like to extend the lease for their office space. The addendum would be for a period of three years, through June 30, 2014. The monthly rate of \$4,916.52 per month would be unchanged. It does provide an option to terminate after two years with a six month written notice. Commissioner Byers added that the source of funding for this request comes from user fees, not from tax dollars.

- Commissioner Byers moved to approve the Third Addendum to the Lease Agreement for Court Services as presented, second by Commissioner Murtaugh; motion carried.

TRANSLATOR AGREEMENT

Commissioner's Assistant Frank Cederquist said that Superior Court 6 has received a grant to pay for services on a contractual basis. Rates are \$50 per hour for translators that have been certified and \$35 per hour for non-certified. These are the contractual agreements; the translators have signed them.

- Commissioner Murtaugh moved to approve the Translator Agreements as presented, second by Commissioner Byers; motion carried.

ORDINANCE 2010-24-CM – AMENDMENT TO WECS

Attorney Luhman stated that Ordinance 2010-24-CM reflects changes to the existing WECS Ordinance; he then read the following proposed changes.

See Appendix A

Commissioner Knochel asked for public comments on the proposed changes.

Robert Brooks, 7413 W 1300S, said that his daughter has night terrors and these changes would affect her sleep. Mr. Brooks went on to say that the changes would harm his family and asked the Commissioners to reconsider making changes to the noise restrictions.

Julie Peretin, 505 Portledge Commons Drive, said that it has been said that Tippecanoe County's Ordinance is the most restrictive in the state. Only fifteen counties in Indiana have enacted a WECS ordinance. Benton and White counties are the only two counties that have installed utility scale industrial wind turbine developments. Randolph Eastern School Corporation and Union City have an industrial turbine and both were constructed in January 2010. By February 2010, one had a broken blade and the other squeaked. Indiana does not have much experience with industrial wind turbines. The minutes of the March 7, 2007 Tippecanoe County Area Plan Commission Ordinance Committee meeting suggest that the companies for those developments primarily wrote the Benton and White County ordinances. Tippecanoe County has written a reasonable ordinance intended to protect residents. The WECS developers are attempting to rewrite our locally written ordinance. Other counties around the nation that have installed WECS have made changes that make their ordinances more restrictive. Oregon has a more restrictive ordinance than our current ordinance. Compromises were made on the current ordinance as it was written, such as setbacks and noise levels. Seldom does Tippecanoe County look to neighboring counties for guidance when creating ordinances; they usually look to us with our calculated ordinances and dedicated staff. The County's planners have made a conscience effort to control the rapid development of Lafayette and West Lafayette. An out-of-state developer is comparing Tippecanoe County to Benton and White County, Benton County's entire population is equal to the population of Jackson Township. A request for a study group has not been granted. Since March of 2010, current information on WECS has been brought to every meeting. Our request for a moratorium, until a final ordinance could be implemented, was denied. Several Commissioners have said, on public record, that they were ready to move forward with the current ordinance and that several wind companies were also comfortable with the ordinance. The last time Invenergy asked for a change to the ordinance they did not provide any evidence to support the claim that half of their development would be affected by an increased set back distance. Now they are attempting to rewrite the ordinance.

Aaron Tyler, 7411 W 1100 S, West Point, said that on April 5, 2010 the Tippecanoe County Commissioners amended County Code by adding Chapter 161 Energy Conversion. The Commissioners and Attorney Luhman spent a lot of time writing the ordinance and the sections that protect the non-participating residents. At that time, Commissioner Byers said that the energy companies had reviewed it and that it was acceptable. On June 21, 2010, residents reviewed the ordinance further and found that the setbacks and sound restrictions needed further work. A moratorium was requested at the June 21, 2010 and again at the July 6, 2010 meeting with no response. Commissioner Murtaugh said that he did not think a moratorium was necessary. The Commissioners have spent a lot of time on the ordinance and seemed happy with it. It was said that the ordinance may need tweaked. Mr. Tyler said that he does not

feel these changes are simply tweaks; now several sections of the document have been rewritten. Why are there such significant changes?

Jim Pairitz, 8323 W 1200 S, West Point, said that he is a registered professional engineer in Indiana, a Purdue Alumni and a proud citizen of Tippecanoe County. Mr. Pairitz said that he has previously submitted changes to the WECS ordinance and it appears that those suggestions have been taken into consideration. However, the most important suggestion, which is to use consistent language including the term “long term background sound”, has been removed. In the WECS ordinance, there is no maximum sound limit based on long-term background noise and the proposed maximum sound limit will be increased from 45 dB to 50 dB. Mr. Pairitz made the following proposals: Appoint a consultant to represent the interest of the County before any major changes are considered to the existing ordinance. Use the language referencing “long term background sound” consistently. Return the maximum sound limit to 45 dB. In addition, the County be responsible to select a consultant and oversee the pre and post construction sound studies.

Kay Pairitz, 8323 W 1200 S, West Point, said that the wind companies claim that a modern wind farm, at a distance of 750 to 1000 feet, is no louder than a refrigerator. When measuring the sound of a refrigerator with a simple sound meter the noise emitted at a distance of two feet was less than 30 dB. The zoning ordinance states that a wind turbine is to be no closer than 1250 feet from a non-participating dwelling. The code has a sound limit of no more than 45 dB when measured from a non-participating dwelling. Is it possible that the wind companies are misrepresenting the truth? Is that why they want to rewrite the code? She asked the Commissioners to explain why the code is being repealed and rewritten.

Joshua VanderPlaats, 60 Newsom Drive, said that he encourages the Commissioners to take the comments of Jim & Kay Pairitz into consideration. Mr. VanderPlaats asked the Commissioners to hire a professional to evaluate the ordinance.

Greg Leuchtmann, Development Manager for Invenergy, said that the changes to the WECS ordinance would make the requirements for the wind farms more objective. Putting a scientific limit of 50 decibels will give the building commissioner something solid and measurable. When working with ambient requirements there is concern because of the variance required during certain periods. Differences in elevations and layout of the terrain can affect the sound pressure and levels. The proposed changes will make the ordinance a more livable, appropriate and practical ordinance to residents and the company. A 50-decibel limit is more restrictive than the 55-decibel limit set on agricultural activities. Invenergy has WECS in Illinois, Wisconsin, Oregon, Texas, and Colorado. In addition, the dbc is not usually measured; typically, it is only the dba. The WECS in Illinois is at 55 decibels.

Kevin D. Nicoson, 8801 S 100W, said that he is opposed to the current set backs because he feels they are too short. However, the 45 dB level is some reassurance regardless of how short the set backs were. The wind farms will disrupt lives and the noise will be 24 hours a day everyday. Agriculture does not work 24 hours a day every day of the year. Mr. Nicoson went on to say that, non-agriculture families in the area do not have a choice.

Don Thelen, 4400 SR 28W, asked why if 45 decibel is fine for Wisconsin why is not it fine here. Why do the WECS developers need the noise levels raised. Mr. Thelen said that he is not happy with the proposed changes to the WECS ordinance.

Commissioner Murtaugh asked Attorney Luhman if the ordinance is passed on first reading today, can amendments be made to the ordinance later. Attorney Luhman replied that changes could be made to the ordinance prior to second reading. Commissioner Byers added that no residents from the northwest part of the County have said anything about the changes. Adding, that he can see the lights and understands

the concerns of the residents, however, Tippecanoe County does have one of the most restrictive WECS ordinances throughout the State.

- Commissioner Murtaugh moved to approve Ordinance 2010-24-CM on first reading, second by Commissioner Byers.

Auditor Weston recorded the vote:

| | |
|----------|-----|
| Byers | Yes |
| Knochel | Yes |
| Murtaugh | Yes |

Ordinance 2010-24-CM passes 3-0 on first reading.

AFFILIATION AGREEMENT BETWEEN CARY HOME AND IVY TECH

Director Humphrey requested approval for an Affiliation Agreement with Ivy Tech. This would provide internship opportunities for Ivy Tech students at Cary Home and Juvenile Alternatives.

- Commissioner Murtaugh moved to approve the Affiliation Agreement as presented, second by Commissioner Byers; motion carried.

GRANTS – Laurie Wilson

Grant Facilitator Laurie Wilson requested approval of a Memorandum of Understanding (MOU) for Court Services. It is for a Professional Services Agreement for the Grant Funded Educator who will be teaching PRime classes. It is funded by the Drug Free Coalition.

- Commissioner Byers moved to approve the MOU as presented, second by Commissioner Murtaugh; motion carried.

Grant Facilitator Laurie Wilson requested approval of a MOU for Cary Home for a Juvenile Detention Alternatives Initiative (JDAI) Program Assistant.

- Commissioner Murtaugh moved to approve the MOU with Cary Home as presented, second by Commissioner Byers; motion carried.

Grant Facilitator Laurie Wilson requested approval of a MOU for Cary Home for a JDAI Project Administrator.

- Commissioner Murtaugh moved to approve the MOU with Cary Home as presented, second by Commissioner Byers; motion carried.

UNFINISHED BUSINESS

None

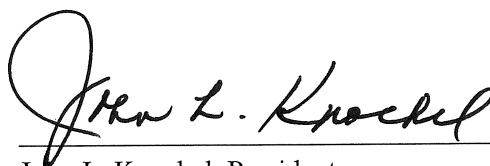
REPORTS ON FILE

Mail & Duplicating
Clerk
Board of Health

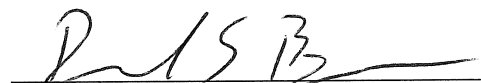
PUBLIC COMMENT

Jim Pairitz, 8323 W 1200 S, West Point, said that using a one hour average of the sound limit would allow the 50 decibel limit to be exceeded for extended periods of time, more than fifteen minutes, and still be in compliance. In the current UZO, the standard for night is 45 decibels, with one fifteen minute excursion once daily.

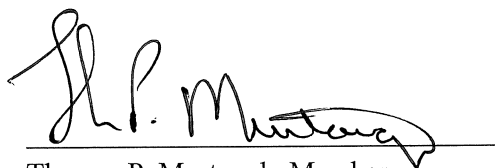
Commissioner Byers moved to adjourn.

**BOARD OF COMMISSIONERS OF
THE COUNTY OF TIPPECANOE**

John L. Knochel, President

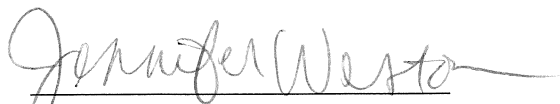


David S. Byers, Vice President



Thomas P. Murtaugh, Member

ATTEST:



Jennifer Weston, Auditor 12-6-2010

Appendix A

§ 161.08 APPLICATION REQUIREMENTS**C. Applications for Commercial Wind Energy Conversion Systems****3. Pre-construction Sound Measurements**

A. The applicant shall submit a pre-construction noise study conducted by a Qualified Independent Acoustical Consultant, which provides sufficient information for the Building Commissioner to verify, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the WECS Project will meet the requirements of Section 161.09 of this Chapter, including without limitation:

1. Make and model of the proposed wind turbine generators (WTG).
2. Electrical output of the proposed wind turbine generators.
3. Octave band sound power levels (L_w) from 63 Hz through 8,000 Hz or one-third octave band sound power levels (L_w) from 50 Hz through 10,000 Hz for the proposed wind turbine generators (WTG).
4. Predicted A-weighted (dBA) and C-weighted (dBC) sound levels within the WECS Project properties and adjoining properties during full load operation of the WECS calculated using industry-recognized international modeling standards (i.e., ISO 9613-2, Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation) and including a description of all meteorological conditions and ground absorption factors. The prediction will use manufacturer's octave band or one-third octave band sound power levels (L_w) based on industry-recognized measurement standards (i.e., IEC 61400-11, Wind turbine generator systems – Part 11: Acoustic noise measurement techniques). A-weighted (dBA) predicted results will be displayed as a sound level contour map (isopleths) throughout the project area. The results will also be provided in tabular format, showing the predicted A-weighted (dBA) and C-weighted (dBC) broadband levels as well as linear (un-weighted) octave band sound pressure levels from 63 Hz to 8 KHz for each turbine location and dwelling within the project area, the closest point on each adjoining non-participating property owner's

property line, and each adjoining non-participating landowner's primary structure and dwelling, if any.

- B. The Building Commissioner will refer the applicant's information and sound studies to a Qualified Independent Acoustical Consultant for review and a determination, at Applicant's cost, whether the proposed WECS will comply with the sound limits set forth in this Ordinance.

14. Shadow Flicker Assessment and Requirements

B. The study will include:

1. The location of each turbine.
2. The location of each receptor (dwelling or occupied structure, structure permitted for construction or intersections between any of the follow road types: Interstate, Principal Arterial, Minor Arterial, Major Collector or Minor Collector) where the WECS may cause shadow flicker to occur
3. Existing topography (elevation contours and vegetation)
4. Rotor diameter and hub height
5. Joint wind speed and direction distribution (wind rose table)
6. Hours of sunshine (long term monthly references)

- E. Wind Turbines shall be sited such that shadow flicker will not fall on a receptor, except that shadow flicker expected to fall on a dwelling or intersection as described in Section 161.08 C.14.B.2 shall be allowed if the flicker will not exceed 40 hours per year, or the number of hours that the owner of such dwelling or intersection as described in Section 161.08 C.14.B.2 has agreed to in writing, at any one receptor measured as the sum of those times during which shadow flicker occurs during any calendar year.

§ 161.09 SAFETY DESIGN AND INSTALLATION STANDARDS

L. Other Applicable Standards

3. Noise and vibration

The noise level measured at any time any part of a WECS Project is operating, or when all WECS are fully operating, shall not :

- a. Exceed **50dBA ($L_{Aeq\ 1-Hour}$)** or **exceed 65 dBC ($L_{Ceq\ 1-Hour}$)** when measured at a point within 25 feet of a non-participating landowner's primary structure and dwelling, if any, on a direct line between such primary structure and dwelling, if any, and the nearest WECS Tower.
- b. Exceed **55 dBA ($L_{Aeq\ 1-Hour}$)** or **exceed 75 dBC ($L_{Ceq\ 1-Hour}$)** when measured at the point on a non-participating landowner's property line which is closest to the nearest WECS Tower.

- c. Exceed **70 dB (L_{eq} 1-Hour) sound pressure level in the 31 Hz octave band or 60 dB (L_{eq} 1-Hour) sound pressure level in the 63 Hz octave band** when measured at a point within 25 feet of a non-participating landowner's primary structure and dwelling, if any, on a direct line between such primary structure and dwelling, if any, and the nearest WECS Tower.
- d. Exceed **75 dB (L_{eq} 1-Hour) sound pressure level in the 31 Hz octave band or 65 dB (L_{eq} 1-Hour) sound pressure level in the 63 Hz octave band** when measured at the point on a non-participating landowner's property line which is closest to the nearest WECS Tower.
- e. Result in tones. Tonal noise exists if the one-third octave band sound pressure level in the band with the suspected tone exceeds the arithmetic average of the two contiguous bands by 5 decibels (dB) for center frequencies of 500 Hz and above, or by 8 dB for center frequencies between 160 Hz and 400 Hz, or by 15 dB for center frequencies less than or equal to 125 Hz when measured in the direction of the WECS and within 25 feet of a non-participating landowner's primary structure and dwelling, if any.

6. Collection lines

All communications and electricity collection lines installed as part of any WECS shall be buried underground. Communication and electricity collection lines only refer to lines between wind turbines. Electric lines between the WECS substation and the transmission grid may be above ground lines.

§ 161.10 OPERATION AND MAINTENANCE STANDARDS

C. Complaint Resolution

1. After a WECS Inspection Certificate has been issued, a person aggrieved by an alleged failure of the owner or operator of the WECS to comply with the Safety Design and Installation Standards set out in Section 161.09 or the Operation and Maintenance Standards set out in Section 161.10 (the Standards) may file a written complaint with the Building Commissioner specifying the factual basis for the alleged failure.

If the Building Commissioner determines that the facts alleged, if true, would constitute a violation of the Standards, or otherwise has reason to believe that a violation has occurred, the Building Commissioner shall notify the owner or operator of the alleged violation in writing, and deliver a copy of the complaint, if any, to the owner or operator.

The owner or operator shall

- (a) log the complaint,
- (b) log the WECS operating and meteorological conditions for the reported time of the complaint,
- (c) take reasonable steps to remedy such complaint,
- (d) provide a written response to the complainant, and

(e) submit a copy of the complaint, the response, the operating and meteorological condition log, and documentation of compliance to the Building Commissioner within 10 business days after receiving a copy of the written complaint.

2. Complaint resolution shall be deemed satisfactory when the owner or operator has demonstrated to the satisfaction of the Building Commissioner that it has complied with the standards set out in Section 161.09 and Section 161.10 with respect to the issues raised in such written complaint.

3. If the Building Commissioner determines that an owner or operator of the WECS has failed to take reasonable steps to remedy a complaint as set out in Subsection 2 above within ninety (90) days after receipt thereof, the Building Commissioner may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the reported time of the complaint until the owner or operator has demonstrated to the satisfaction of the Building Commissioner that it is in compliance with the standards set out in Section 161.09 and Section 161.10 regarding the issues raised in such written complaint. Any curtailment order shall specify the (1) hub height wind speed as measured at the WTG nearest to the complainant (2) wind direction as measured at the WTG nearest to the complainant (3) specific hour of the day (ranging from 7 am to 10 pm) or specific hour of the night (from 10 pm to 7 am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Commissioner may revoke the owner or operator's WECS Inspection Certificate upon 15 days prior written notice thereof; provided however the appeal rights set out in Section 161.20 shall apply. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.

§ 161.15 POST-CONSTRUCTION REQUIREMENTS

C. Post-construction Sound Measurements

1. Within twelve months after issuance of a WECS Inspection Certificate, and annually thereafter, the applicant, owner or operator of all WECS except Micro WECS shall submit a post-construction noise profile study which includes sufficient information, including sound modeling and actual measurements, for the Building Commissioner to verify, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the WECS continues to meet the requirements of Section 161.09 of this Chapter.

2. Post-construction measurement methods will be based on good-engineering practices and industry-recognized international standards for the measurement of WTG noise emissions, (IEC 61400-11) when applicable.

3. Post-construction sound measurements shall include measurements taken
1) at a point within 25 feet of each non-participating landowner's dwelling or

primary structure on a direct line between such dwelling or primary structure and the nearest WECS Tower, and 2) at the point on each non-participating landowner's property line which is closest to the nearest WECS Tower.

4. Post-construction sound measurements shall be collected during meteorological conditions which result in full electrical output of the WECS.

5. If post-construction sound measurements of ambient noise (WECS noise plus all non-WECS related noise) are less than or equal to the WECS-only noise limits specified in Section 161.09, the WECS will be in conformance with noise limitations of this Chapter. Otherwise, WECS-only noise levels may be determined using practical acoustical measurement and/or analysis techniques including but not limited to: (1) conducting measurements with all WTGs operating and then immediately again with all WTGs locked-out, to estimate WECS-only noise levels, (2) use of spectral analysis techniques to estimate WECS-only noise levels, (3) use of acoustical models to propagate 'close-in' WECS measurements to 'far-field' receiver locations, etc.

6. If the Building Commissioner determines, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the post-construction noise profile study fails to demonstrate continued compliance with the requirements of Section 161.09 of this Chapter, the Building Commissioner shall notify the owner or operator of such failure in writing, and the owner or operator shall have ninety (90) days to cure such failure and provide written documentation of compliance to the Building Commissioner. If the Building Commissioner determines that an owner or operator of the WECS has failed to take reasonable steps to remedy such non-compliance within ninety (90) days, the Building Commissioner may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the time the actual measurements contained in the report were taken, until the owner or operator has demonstrated to the satisfaction of the Building Commissioner that it is in compliance with the standards set out in Section 161.09 and Section 161.10 regarding the issues raised in the post-construction noise profile study. Any curtailment order shall specify the (1) hub height wind speed as measured at the WTG nearest to the complainant (2) wind direction as measured at the WTG nearest to the complainant (3) specific hour of the day (ranging from 7 am to 10 pm) or specific hour of the night (from 10 pm to 7 am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Commissioner may revoke the owner or operator's WECS Inspection Certificate upon 15 days prior written notice thereof; provided however the appeal rights set out in Section 161.20 shall apply. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.